

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ANDREW KWANGHWI CHOI, M.D.

Physician's and Surgeon's Certificate
No. A 41771,

Respondent.

Case No. 800-2016-021538

OAH No. 2017120955

DECISION AFTER NON-ADOPTION

Matthew Goldsby, Administrative Law Judge (ALJ) with the Office of Administrative Hearings, heard this matter on September 14, 2017, at Los Angeles, California.

Wendy Widlus, Deputy Attorney General, appeared and represented complainant Kimberly Kirchmeyer, Executive Director of the Medical Board of California (Board), Department of Consumer Affairs (Complainant).

Gary Wittenberg, Attorney at Law, appeared and represented respondent Andrew Kwanghwi Choi (Respondent), who was present throughout the hearing.

The parties submitted the matter for decision at the conclusion of the hearing on September 14, 2017. On October 6, 2017, The ALJ issued a Proposed Decision.

On November 6, 2017, Panel A of the Board issued an Order of Non-Adoption of Proposed Decision. Oral argument on the matter was heard by the Panel on January 18, 2018, with ALJ Diane Schneider presiding. Complainant was represented by Deputy Attorney General Lynne Dombrowski. Respondent was present and was represented by Adam G. Slote, Attorney at Law. Panel A, having read and considered the entire record, including the transcript and the exhibits, and having considered the written and oral arguments presented by the parties, hereby enters this decision after non-adoption.

FACTUAL FINDINGS

Jurisdiction and License History

1. Complainant brought the Accusation in her official capacity. Respondent timely submitted a Notice of Defense.

2. On June 10, 1985, the Board issued to Respondent Physician's and Surgeon's Certificate number A41771. Respondent's license is valid and is scheduled to expire on November 30, 2018.

3. Respondent has a prior history of license discipline. The Board issued a public reprimand on July 22, 2011, which read: "On August 11, 2008, you were convicted of one misdemeanor count of receipt and delivery in interstate commerce of a misbranded drug. In mitigation, at the time you purchased and received the drug, you mistakenly believed it was approved by the FDA. Upon learning the drug was misbranded, you immediately discontinued using it. You have indicated that all patients who were administered the drug were notified by letter and all fees were refunded. There were no reports of adverse patient outcomes."¹

Respondent's Background, Education, Training, and Experience

4. Respondent attended medical school at Seoul National University in Seoul, South Korea, earning a Doctor of Medicine degree in 1976. He then served in the Korean Navy as a military doctor for three years. He came to the United States in 1979, and trained as a surgical resident at the Flushing Hospital Medical Center in Flushing, New York. In 1980, he began his residency in otolaryngology at the Medical College of Virginia in Richmond, Virginia. He completed a fellowship program under the auspices of the American Academy of Facial Plastic and Reconstructive Surgery in 1984.

5. Respondent is board certified in facial plastic and reconstructive surgery, and otolaryngology. He is currently licensed only in California, but was previously licensed in Maryland, Virginia, Washington, D.C., and New York. He has no history of license discipline in any other state.

6. Respondent moved to California in 1985, establishing a private practice in the Koreatown district of Los Angeles. The nature of his practice consists of seeing patients with sinus and ear problems, hearing problems, or trauma, and performing aesthetic or cosmetic surgery. His staff privileges at Hollywood Presbyterian Hospital are in good standing and have never been suspended or restricted.

Respondent's Use of Alcohol

7. In the past, Respondent consumed a glass or two of wine a couple of times per month, mostly with dinner. He developed an interest in wine and has collected bottles of wine for investment.

¹ Official notice was taken of the content of the public reprimand pursuant to the oral stipulation of the parties during the hearing.

8. Respondent credibly testified that he has never consumed alcohol while working, that he has never been intoxicated while seeing a patient, that he does not currently take any pain medications, and that he has never used recreational drugs.

Alcohol Related Conviction

9. On March 4, 2016, Respondent entered a plea of nolo contendere and was convicted of driving with a blood alcohol content of 0.08 percent or more in violation of Vehicle Code section 23152, subdivision (b), a misdemeanor. (*People v. Choi* (Super. Ct. Los Angeles County, 2016, No. 6MN00884).) Respondent entered his plea through his attorney without appearing in court.

10. The court suspended the imposition of sentence and placed Respondent on probation for three years. Terms of probation included orders to serve one day in jail (with credit for one day), to pay fines and restitution totaling \$2,022, to enroll in and complete a first-offender alcohol counseling program, to attend 10 Alcoholics Anonymous meetings, to install an interlock system in his vehicle for five months, and to obey the law.

11. Respondent remains on probation, which is scheduled to expire in March 2019.

Facts and Circumstances of the Conviction

12. The conviction arose from an incident on January 7, 2016. Respondent met friends for dinner at a Korean restaurant in Los Angeles. Respondent drank red wine and soju, a Korean rice wine with a stronger alcohol content than red wine. Respondent testified, "I became so intoxicated, I was drunk." Nonetheless, when the dinner concluded, Respondent walked to his car, and drove away from the restaurant.

13. At approximately 11:55 p.m. on the same night, police officers responded to a radio call of a traffic collision within three miles from the restaurant. Respondent identified himself to the officers as the driver and sole occupant of the only car involved in the accident. He admitted to the officers that he collided with a light pole after falling asleep at the wheel.² The right front end of his vehicle was damaged to the extent that the vehicle was not drivable.

² Respondent testified that he returned to the scene the next day and, upon finding no damage to the light pole, now believes he did not collide with the light pole. However, he offered no other evidence to explain the cause of the damage to the front of his vehicle, other than hitting the curb. Respondent's testimony is contradicted by inherent improbabilities as to its accuracy. (*Snell v. Telehala* (1969) 274 Cal.App.2d 61.) Moreover, courts look upon recantation with suspicion. (*Johnson v. United States* (1961) 291 F.2d 150, 154.) Accordingly, Respondent's admission to the officer is sufficient to prove the matter asserted. (*Lake v. Reed* (1997) 16 Cal.4th 448.)

14. The officers observed objective symptoms of intoxication, “such as bloodshot/watery eyes, uncoordination, slurred speech, and strong odor of an alcoholic beverage emitting from his breath.” (Ex. 7, p. 054.) Respondent failed a field sobriety test. He was taken to a local police station and furnished a blood sample for testing, which showed a blood-alcohol content of 0.18 percent.

Evidence of Rehabilitation and Mitigation

15. To date, Respondent has complied with the terms and conditions of probation. He attended 16 Alcoholics Anonymous meetings, completed the first offender program, installed an interlock system in his car for five months, and paid all fines and fees.

16. At the hearing, Respondent expressed remorse, embarrassment, and shame for his misconduct. He testified that he will never again drive after drinking alcohol, and that he has reflected upon what could have happened on the night of the incident, stating “I could have killed myself or somebody else.” He has curtailed his consumption of alcohol, having consumed wine on three occasions since the accident. He is currently training for a 50-mile mountain bike race and is completely abstinent as part of his training regimen.

17. After his arrest, Respondent sought evaluation for alcohol abuse from Richard S. Sandor, M.D. For the past 37 years, Dr. Sandor has been in private practice as a specialist in psychiatry and addiction medicine. His educational history includes a Bachelor of Arts degree in biology from Yale University in 1968 and a Doctor of Medicine degree from the University of Southern California School of Medicine in 1972. Since 1985, Dr. Sandor has been certified as a diplomate by the American Board of Psychiatry and Neurology. He has served as an expert witness in civil malpractice matters and disciplinary proceedings for the Bureau of Registered Nursing.

18. On August 19, 2016, Dr. Sandor interviewed Respondent for approximately 90 minutes, and reviewed court records, the police report, and letters from colleagues. He obtained two CURES³ reports to investigate whether any controlled substances were dispensed to Respondent. He observed that Respondent was prescribed Vicodin after shoulder surgery in October 2016, but found no other prescriptions for controlled substances.

///

///

³ The Controlled Substance Utilization Review and Evaluation System (CURES) is a database administered by the California Department of Justice (DOJ) of all controlled substances prescribed and dispensed in California. Pharmacies, clinics, and other dispensers of controlled substances are required to report dispensing data to the DOJ.

19. Dr. Sandor prepared a written evaluation to address whether Respondent has an alcohol use disorder⁴ and poses a risk to the public. In Dr. Sandor's opinion, Respondent does not have an alcohol use disorder or pose a risk to the public, but "he exercised exceedingly poor judgment with respect to drinking and driving on one occasion." (Ex. 12, p. 0102.) Dr. Sandor further noted, "His poor judgment on this occasion may well have been, at least to some degree, a consequence of being intoxicated – there is no evidence from any other part of his life that he chronically makes bad choices or acts irresponsibly." (Ex. 12.)

20. Dr. Sandor based his opinion on the American Psychiatric Association's most recently published *Diagnostic and Statistical Manual of Mental Disorders* (DSM-V), which defines alcohol use disorder as "a problematic pattern of substance use which results in clinically significant impairment and distress." (Ex. 12, p. 0103.) The DSM-V lists 11 criteria, two or more of which must be present within a 12-month period to support a diagnosis of alcohol use disorder. Respondent's single arrest for driving under the influence of alcohol met none of the criteria. Dr. Sandor observed none of the following objective signs of the disorder: craving alcohol; spending time obtaining alcohol or recovering from its use; failing to fulfill major role obligations of work; giving up or curtailing social, occupational, or recreational activities because of alcohol use; and continued alcohol use despite knowledge that it will exacerbate ongoing psychological or physical problems. Respondent's denial of these symptoms was not contradicted by independent collateral sources of information. Dr. Sandor placed considerable weight on the "glowing reports" of Respondent's professional activities from the "colleagues who have been in a position to observe his behavior very carefully." (Ex. 12, p. 103.)

21. In his written evaluation, Dr. Sandor set forth the following rationale in concluding that Respondent poses no risk to the public:

The vast majority of adults in the United States drink alcohol. Some proportion of these people will meet the criteria for substance use disorder, but most are casual, social drinkers. A further portion of those who drink may even develop one or even two problems as a result of their alcohol use. If these problems do not appear to be progressing – for example, manifesting within a 12 month period – and do not occur in increasing frequency or severity, then there are no grounds for diagnosing that person an alcoholic. When continued drinking results in the accumulation of more and more problems, it does suggest the existence of a substance use disorder. The chief characteristic of alcoholism as it develops is that the individual becomes unreliable. As more and more time, more and more energy and resources are taken up

⁴ "Alcohol use disorder" is the formal diagnosis of the condition commonly known as alcoholism.

into the addiction, less and less is available for work, family, recreation, and other social activities. Among physicians who become alcoholics, we characteristically see individuals fail to keep or cancel appointments at the last minute (and often produce excuses which become less and less credible over time), appear at offices or clinics at unscheduled hours, fail to keep adequate medical records, make rounds at hospitals at unusual hours, and so on. As the disorder progresses, colleagues and ancillary staff begin to complain of the doctor's unreliability, and there may even be instances of complaints that the doctor has alcohol on his or her breath. We see none of these patterns in [Respondent's] history. In fact, his colleagues' letters describing [Respondent's] behavior and professional work show absolutely nothing like what we expect to see in the development of an alcohol use disorder.

(Ex. 12, p. 103-104.)

22. Dr. Bill Kim testified about Respondent's character. He has known Respondent since 2004 when they entered into a professional relationship at a shared medical facility. Between 2005 and 2007, they saw each other on a regular basis, at least two to three times per week. After their professional association dissolved, they continued to have a personal relationship and cross-referred patients to each other. Dr. Kim testified that he has never observed Respondent under the influence of alcohol. In 13 years, they have socialized together at events where alcohol was served, but alcohol consumption was "not a big part of the night." He testified that Respondent is well-known as a surgeon with integrity, and that he has found Respondent to be reliable, and he has received positive feedback from patients he has referred to Respondent.

23. Respondent offered character reference letters in support of his defense. Respondent disclosed the facts and circumstances underlying the conviction to each person who wrote a letter.

(A) Edward Lee, a Board licensee, wrote the following: "[Respondent] has always demonstrated the highest moral and ethical character. He has always been honest and conscientious with patients. . . . It was quite surprising to learn of the recent DUI incident. . . . I have never observed signs of impaired judgment or abnormal behavior from [Respondent]." (Ex. H.)

(B) David A. Blake, another Board licensee, described Respondent as "a reliable, dependable, trustworthy individual and physician ... [and that] he is always punctual, and extremely competent ... [and] has never presented to surgery appearing under the influence of any alcohol or substances." (Ex. I.)

(C) Peter H. Lee, another Board licensee, wrote, “Knowing [Respondent’s] character personally and professionally, I believe this incident is totally out of his character and is an isolated aberrant occurrence.” (Ex. J.)

(D) James R. Negele, an attorney, wrote: “[Respondent and I] have shared many meals together in social situations where alcohol was served, and I never once saw him drink more than one or two glasses of wine over the course of an entire evening. When he told me he had gotten a DUI I was shocked. From all my knowledge of and experience with [Respondent] his getting a DUI is completely aberrational and out of character. [Respondent] is the epitome of a responsible gentleman: punctual, polite, and always considerate of others. I have never seen him impaired in any way, even slightly. Clearly, this lapse of [Respondent’s] judgment is an anomaly that will never be repeated.” (Ex. K.)

(E) C. Anderson Troedsson, the owner of an architectural design development firm, wrote, “My wife and I have enjoyed the company of [Respondent] and his wife (name omitted) at numerous dinners and other social occasions, and although alcoholic beverages were served at all, and not once did I ever [witness Respondent] intoxicated or even tipsy. Quite the contrary, he was always a model of drinking in moderation.” (Ex. L.)

(F) Michael G. Harrington, Program Director of Huntington Medical Research Institute, wrote: “I consider [Respondent’s] DUI is completely out of character, as I often saw him in the presence of alcohol when he was never out of control. In fact he has always been keen to collect and learn about wine in a scholarly manner, as an investment in high-quality wine, and never as a means to abuse or lose control. This incident is a complete surprise. In all the years I’ve known [Respondent] I have never seen him impaired in any way or abuse alcohol. He is always professional, punctual, respectful and has a reputation for being dependable and always reliable.” (Ex. M.)

LEGAL CONCLUSIONS

Standard of Proof

1. The standard of proof in an administrative action seeking to suspend or revoke a physician’s certificate is clear and convincing evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

2. Clear and convincing evidence requires a finding of high probability or evidence so clear as to leave no substantial doubt; sufficiently strong evidence to command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.)

///

///

The Law Governing Discipline

3. A licensee who has been found guilty under the Medical Practice Act may: have his or her license revoked; have his or her right to practice suspended for a period not to exceed one year; be placed on probation and required to pay the cost of probation monitoring; be publicly reprimanded by the Board; or have any other action taken in relation to discipline as the Board or administrative law judge deems proper. (Bus. & Prof. Code, § 2227, subd. (a).)

4. The Board must take action against any licensee who is charged with unprofessional conduct. (Bus. & Prof. Code, § 2234.)

5. Unprofessional conduct includes conduct which is unbecoming a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575)

6. Unprofessional conduct includes the conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon. (Bus. & Prof. Code, § 2236, subd. (a).)

7. California Code of Regulations, title 16, section 1360 provides, in part:

A crime or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license, certificate or permit under the Medical Practice Act if to a substantial degree it evidences present or potential unfitness of a person holding a license, certificate or permit to perform the functions authorized by the license, certificate or permit in a manner consistent with the public health, safety or welfare.

8. Unprofessional conduct includes the use of alcoholic beverages to an extent, or in such a manner, as to be dangerous or injurious to the licensee, or to any other person or to the public. (Bus. & Prof. Code, § 2239, subd. (a).)

First Cause for Discipline – Conviction of Crime

9. Respondent was convicted of driving with a blood-alcohol content of more than 0.08 percent. As proven by clear and convincing evidence, Respondent was so intoxicated that he fell asleep behind the wheel of his automobile which collided with a light pole. This evidence exhibits to a substantial degree a present or potential unfitness to perform the functions of a physician and surgeon in a manner consistent with the public health, safety, or welfare. Accordingly, the crime is substantially related to the qualifications, functions, or duties of a physician and surgeon under California Code of Regulations, title 16, section 1360.

10. Cause exists to discipline Respondent's certificate under Business and Professions Code sections 2227 and 2236 because he was convicted of a crime substantially related to the qualifications, functions, or duties of a physician and surgeon.

Second Cause for Discipline – Excessive Use of Alcohol

11. Respondent drank enough red wine and soju to cause his blood-alcohol content to measure 0.18 percent, more than twice the legal limit. By his own testimony, Respondent could have killed himself or another person by driving his car while so intoxicated.

12. Cause exists to discipline Respondent's certificate in that he violated Code sections 2227 and 2239, subdivision (a), because he drank alcohol to an extent, or in a manner, as to be dangerous or injurious to himself and the public.

Level of Discipline

13. In reaching a decision on the appropriate level of discipline, the Board must consider the guidelines entitled *Manual of Model Disciplinary Orders and Disciplinary Guidelines*, 12th Edition, 2016. (Cal. Code Regs., tit. 16, § 1361, subd. (a).) For the conviction of a misdemeanor crime, and the use of alcohol to the extent or in a manner dangerous to the physician or others, the guidelines recommend a maximum penalty of revocation and a minimum penalty of stayed revocation with five years of probation.

14. At the hearing, Complainant sought the imposition of the minimum recommended penalty. Specifically, the deputy attorney general argued that an appropriate level of discipline would be to revoke Respondent's license, stay the revocation, and place Respondent on probation subject to terms that would oversee and monitor Respondent's use of alcohol.

15. Although the evidence did not establish a pattern of repeated alcohol abuse to support a diagnosis of alcohol use disorder, a single conviction for driving under the influence may support a disciplinary proceeding against a licensee. (*Sulla v. Board of Registered Nursing* (2012) 205 Cal.App.4th 1195.) The purpose of license discipline includes not only the protection of the public, but also the prevention of future harm. To defer license discipline until the licensee establishes recidivism poses a risk of harm to the public, in disregard of these purposes. The law recognizes that it is far more desirable to impose discipline before a licensee causes harm than after harm has occurred. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757; *In re Kelley* (1990) 52 Cal.3d 487.)

16. In aggravation, the Board publicly reprimanded Respondent based on a prior conviction.

///

Mitigating Factors and Rehabilitation

17. Deviating from the guidelines is appropriate where the facts of the particular case warrant such a deviation, such as the presence of mitigating factors. (Cal. Code Regs., tit. 16, § 1361, subd. (a).)

18. Rehabilitation requires a consideration of those offenses from which one has allegedly been rehabilitated. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041.) Rehabilitation is a state of mind, and the law looks with favor upon rewarding with the opportunity to serve one who has achieved reformation and regeneration. (*Id.*, at 1058.) The absence of a prior disciplinary record is a mitigating factor. (*Chefsky v. State Bar* (1984) 36 Cal.3d 116, 132, fn. 10.) Remorse and cooperation are mitigating factors. (*In re Demergian* (1989) 48 Cal.3d 284, 296.) While a candid admission of misconduct and full acknowledgment of wrongdoing may be a necessary step in the rehabilitation process, it is only a first step. A truer indication of rehabilitation is presented if an individual demonstrates by sustained conduct over an extended period of time that he is once again fit to practice. (*In re Trebilcock* (1981) 30 Cal.3d 312, 315-316.)

19. Respondent provided significant evidence of mitigation and rehabilitation. Although he remains on court probation, the conviction was his first offense involving alcohol use, and he has fully cooperated with the terms and conditions of probation to date. More than two years have passed since he engaged in the misconduct that resulted in his conviction, during which time he took responsibility for his actions, sought evaluation and treatment, and established by competent medical evidence that he does not have an alcohol use disorder. His expression of remorse and humiliation credibly exhibit a change in attitude and a state of mind of reformation and regeneration. Although he has a prior public reprimand, the underlying offense was unrelated to alcohol use.

20. The language of California Code of Regulations, title 16, sections 1361 and 1361.5 requires that, if a licensee is disciplined for unprofessional conduct involving the abuse of alcohol, "the licensee shall be presumed to be a substance-abusing licensee," and the "probationary terms and conditions [from the Uniform Standards for Substance-Abusing Licensees] shall be used without deviation in the case of a substance-abusing licensee." In this case, the presumption that Respondent is a substance-abusing licensee has been rebutted.

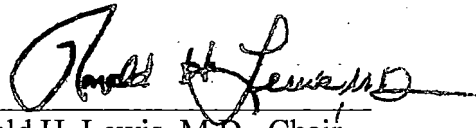
21. Issuing a public reprimand is inconsistent with specific recommendations set forth in the Board's disciplinary guidelines. However, a public reprimand is the most appropriate sanction in light of Respondent's history related to his use of alcohol, the nature and extent of his misconduct giving rise to this disciplinary action, and the effective remedial steps he has taken to ensure similar events will not reoccur. A public reprimand ensures that Respondent's misconduct will be a matter of public record and it will serve as a continuing reminder of his responsibility to refrain from driving while under the influence. Public protection does not require Respondent be placed on probation or that any conditions be placed on the public reprimand.

ORDER

Physician's and Surgeon's Certificate number A 41771 issued to Respondent is hereby publicly reprimanded pursuant to Business and Professions Code section 2227, subdivision (a)(4).

The Decision shall become effective at 5:00 p.m. on March 9, 2018.

IT IS SO ORDERED this 7th day of February, 2018.

A handwritten signature in black ink, appearing to read "Ronald H. Lewis, M.D.", written over a horizontal line.

Ronald H. Lewis, M.D., Chair
Panel A
Medical Board of California

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:)

ANDREW KWANGHWI CHOI, M.D.)

Physician's & Surgeon's
Certificate No: A41771,)

Respondent)

Case No.: 8002016021538

OAH No.: 2017030829

**ORDER OF NON-ADOPTION
OF PROPOSED DECISION**

The Proposed Decision of the Administrative Law Judge in the above-entitled matter has been **non-adopted**. A panel of the Medical Board of California (Board) will decide the case upon the record, including the transcript and exhibits of the hearing, and upon such written argument as the parties may wish to submit directed at whether the level of discipline ordered is sufficient to protect the public. The parties will be notified of the date for submission of such argument when the transcript of the above-mentioned hearing becomes available.

To order a copy of the transcript, please contact Jilio-Ryan Court Reporters, 14661 Franklin Avenue, Ste. 150, Tustin, California 92780. The telephone number is (714) 424-9902.

To order a copy of the exhibits, please submit a written request to this Board.

In addition, oral argument will only be scheduled if a party files a request for oral argument with the Board within 20 days from the date of this notice. If a timely request is filed, the Board will serve all parties with written notice of the time, date and place for oral argument. Oral argument shall be directed only to the question of whether the proposed penalty should be modified. Please do not attach to your written argument any documents that are not part of the record as they cannot be considered by the Panel. The Board directs the parties' attention to Title 16 of the California Code of Regulations, sections 1364.30 and 1364.32 for additional requirements regarding the submission of oral and written argument.

Please remember to serve the opposing party with a copy of your written argument and any other papers you might file with the Board. The mailing address of the Board is as follows:

MEDICAL BOARD OF CALIFORNIA
2005 Evergreen Street, Suite 1200
Sacramento, CA 95815-3831
(916) 263-6668
Attention: Michelle Solario

Date: November 6, 2017



Ronald H. Lewis, M.D.
Chair, Panel A

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ANDREW KWANGHWI CHOI, M.D.

Physician's and Surgeon's Certificate
No. A 41771,

Respondent.

Case No. 800-2016-021538

OAH No. 2017030829

PROPOSED DECISION

Matthew Goldsby, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on September 14, 2017, at Los Angeles, California.

Wendy Widlus , Deputy Attorney General, appeared and represented complainant Kimberly Kirchmeyer, Executive Director of the Medical Board of California (Board), Department of Consumer Affairs.

Gary Wittenberg, Attorney at Law, appeared and represented respondent Andrew Kwanghwi Choi, who was present throughout the hearing.

The parties submitted the matter for decision at the conclusion of the hearing on September 14, 2017.

FACTUAL FINDINGS

Jurisdiction and License History

1. Complainant brought the Accusation in her official capacity. Respondent timely submitted a Notice of Defense.

2. On June 10, 1985, the Board issued to respondent Physician's and Surgeon's Certificate number A41771. Respondent's license is valid and is scheduled to expire on November 30, 2018.

3. Respondent has no history of license discipline, but the Board issued a public reprimand on July 22, 2011, which read: "On August 11, [2007], you were convicted of one misdemeanor count of receipt and delivery in interstate commerce of a misbranded drug. In mitigation, at the time you purchased and received the drug, you mistakenly believed it was approved by the FDA. Upon learning the drug was misbranded, you immediately discontinued using it. You have indicated that all patients who administered the drug were notified by letter and all fees were refunded. There were no reports of adverse patient outcomes."¹

Respondent's Background, Education, Training, and Experience

4. Respondent attended medical school at Seoul National University in Seoul, South Korea, earning a Doctor of Medicine degree in 1976. He then served in the Korean Navy as a military doctor for three years. He came to the United States in 1979, and trained as a surgical resident at the Flushing Hospital Medical Center in Flushing, New York. In 1980, he began his residency in otolaryngology at the Medical College of Virginia in Richmond, Virginia. He completed a fellowship program under the auspices of the American Academy of Facial Plastic and Reconstructive Surgery in 1984.

5. Respondent is board-certified in facial plastic and reconstructive surgery, and otolaryngology. He is currently licensed only in California, but was previously licensed in Maryland, Virginia, Washington, D.C., and New York. He has no history of license discipline in any other state.

6. Respondent moved to California in 1985, establishing a private practice in the Koreatown district of Los Angeles. The nature of his practice consists of seeing patients with sinus and ear problems, hearing problems, or trauma, and performing aesthetic or cosmetic surgery. His staff privileges at Hollywood Presbyterian Hospital are in good standing and have never been suspended or restricted.

Respondent's Use of Alcohol

7. In the past, respondent consumed a glass or two of wine a couple of times per month, mostly with dinner. He developed an interest in wine and has collected bottles of wine for investment.

8. Respondent credibly testified that he has never consumed alcohol while working, that he has never been intoxicated while seeing a patient, that he does not currently take any pain medications, and that he has never used recreational drugs.

¹ Official notice was taken of the content of the public reprimand pursuant to the oral stipulation of the parties during the hearing.

Alcohol Related Conviction

9. On March 4, 2016, respondent entered a plea of nolo contendere and was convicted of driving with a blood alcohol content of 0.08 percent or more in violation of Vehicle Code section 23152, subdivision (b), a misdemeanor. (*People v. Choi* (Super. Ct. Los Angeles County, 2016, No. 6MN00884).) Respondent entered his plea through his attorney without appearing in court.

10. The court suspended the imposition of sentence and placed respondent on probation for three years. Terms of probation included orders to serve one day in jail (with credit for one day), to pay fines and restitution totaling \$2,022, to enroll in and complete a first-offender alcohol counseling program, to attend 10 Alcoholics Anonymous meetings, to install an interlock system in his vehicle for five months, and to obey the law.

11. Respondent remains on probation, which is scheduled to expire in March 2019.

Facts and Circumstances of the Conviction

12. The conviction arose from an incident on January 7, 2016. Respondent met friends for dinner at a Korean restaurant in Los Angeles. Respondent drank red wine and soju, a Korean rice wine with a stronger alcohol content than red wine. Respondent testified, “I became so intoxicated, I was drunk.” Nonetheless, when the dinner concluded, respondent walked to his car, and drove away from the restaurant.

13. At approximately 11:55 p.m. on the same night, police officers responded to a radio call of a traffic collision within three miles from the restaurant. Respondent identified himself to the officers as the driver and sole occupant of the only car involved in the accident. He admitted to the officers that he collided with a light pole after falling asleep at the wheel.² The right front end of his vehicle was damaged to the extent that the vehicle was not drivable.

14. The officers observed objective symptoms of intoxication, “such as bloodshot/watery eyes, uncoordination, slurred speech, and strong odor of an alcoholic beverage emitting from his breath.” (Ex. 7, p. 054.) Respondent failed a field sobriety test.

² Respondent testified that he returned to the scene the next day and, upon finding no damage to the light pole, now believes he did not collide with the light pole. However, he offered no other evidence to explain the cause of the damage to the front of his vehicle, other than hitting the curb. Respondent’s testimony is contradicted by inherent improbabilities as to its accuracy. (*Snell v. Telehala* (1969) 274 Cal.App.2d 61.) Moreover, courts look upon recantation with suspicion. (*Johnson v. United States* (1961) 291 F.2d 150, 154.) Accordingly, respondent’s admission to the officer is sufficient to prove the matter asserted. (*Lake v. Reed* (1997) 16 Cal.4th 448.)

He was taken to a local police station and furnished a blood sample for testing, which showed a blood-alcohol content of 0.18 percent.

Evidence of Rehabilitation and Mitigation

15. To date, respondent has complied with the terms and conditions of probation. He attended 16 Alcoholics Anonymous meetings, completed the first offender program, installed an interlock system in his car for five months, and paid all fines and fees.

16. At the hearing, respondent expressed remorse, embarrassment, and shame for his misconduct. He testified that he will never again drive after drinking alcohol, and that he has reflected upon what could have happened on the night of the incident, stating “I could have killed myself or somebody else.” He has curtailed his consumption of alcohol, having consumed wine on three occasions since the accident. He is currently training for a 50-mile mountain bike race and is completely abstinent as part of his training regimen. In the morning, respondent wakes up early to go swimming, works out with weights twice per week, rides a stationary bike twice per week, and bikes for five to seven hours on Sundays.

17. After his arrest, respondent sought evaluation for alcohol abuse from Richard S. Sandor, M.D. For the past 37 years, Dr. Sandor has been in private practice as a specialist in psychiatry and addiction medicine. His educational history includes a Bachelor of Arts degree in biology from Yale University in 1968 and a Doctor of Medicine degree from the University of Southern California School of Medicine in 1972. Since 1985, Dr. Sandor has been certified as a diplomate by the American Board of Psychiatry and Neurology. He has served as an expert witness in civil malpractice matters and disciplinary proceedings for the Bureau of Registered Nursing.

18. On August 19, 2016, Dr. Sandor interviewed respondent for approximately 90 minutes, and reviewed court records, the police report, and letters from colleagues. He obtained two CURES³ reports to investigate whether any controlled substances were dispensed to respondent. He observed that respondent was prescribed Vicodin after shoulder surgery in October 2016, but found no other prescriptions for controlled substances.

19. Dr. Sandor prepared a written evaluation to address whether respondent has an alcohol use disorder⁴ and poses a risk to the public. In Dr. Sandor’s opinion, respondent does not have an alcohol use disorder or pose a risk to the public, but “he exercised exceedingly poor judgment with respect to drinking and driving on one occasion.” (Ex. 12,

³ The Controlled Substance Utilization Review and Evaluation System (CURES) is a database administered by the California Department of Justice (DOJ) of all controlled substances prescribed and dispensed in California. Pharmacies, clinics, and other dispensers of controlled substances are required to report dispensing data to the DOJ.

⁴ “Alcohol use disorder” is the formal diagnosis of the condition commonly known as alcoholism.

p. 0102.) Dr. Sandor further noted, “His poor judgment on this occasion may well have been, at least to some degree, a consequence of being intoxicated – there is no evidence from any other part of his life that he chronically makes bad choices or acts irresponsibly.” (Ex. 12.)

20. Dr. Sandor based his opinion on the American Psychiatric Association’s most recently published *Diagnostic and Statistical Manual of Mental Disorders* (DSM-V), which defines alcohol use disorder as “a problematic pattern of substance use which results in clinically significant impairment and distress.” (Ex. 12, p. 0103.) The DSM-V lists 11 criteria, two or more of which must be present within a 12-month period to support a diagnosis of alcohol use disorder. Respondent’s single arrest for driving under the influence of alcohol met none of the criteria. Dr. Sandor observed none of the following objective signs of the disorder: craving alcohol; spending time obtaining alcohol or recovering from its use; failing to fulfill major role obligations of work; giving up or curtailing social, occupational, or recreational activities because of alcohol use; and continued alcohol use despite knowledge that it will exacerbate ongoing psychological or physical problems. Respondent’s denial of these symptoms was not contradicted by independent collateral sources of information. Dr. Sandor placed considerable weight on the “glowing reports” of respondent’s professional activities from the “colleagues who have been in a position to observe his behavior very carefully.” (Ex. 12, p. 103.)

21. In his written evaluation, Dr. Sandor set forth the following rationale in concluding that respondent poses no risk to the public:

The vast majority of adults in the United States drink alcohol. Some proportion of these people will meet the criteria for substance use disorder, but most are casual, social drinkers. A further portion of those who drink may even develop one or even two problems as a result of their alcohol use. If these problems do not appear to be progressing – for example, manifesting within a 12 month period – and do not occur in increasing frequency or severity, then there are no grounds for diagnosing that person an alcoholic. When continued drinking results in the accumulation of more and more problems, it does suggest the existence of a substance use disorder. The chief characteristic of alcoholism as it develops is that the individual becomes unreliable. As more and more time, more and more energy and resources are taken up into the addiction, less and less is available for work, family, recreation, and other social activities. Among physicians who become alcoholics, we characteristically see individuals fail to keep or cancel appointments at the last minute (and often produce excuses which become less and less credible over time), appear at offices or clinics at unscheduled hours, fail to keep adequate medical records, make rounds at hospitals at unusual hours, and so on. As the disorder progresses, colleagues and ancillary staff

begin to complain of the doctor's unreliability, and there may even be instances of complaints that the doctor has alcohol on his or her breath. We see none of these patterns in [respondent's] history. In fact, his colleagues' letters describing [respondent's] behavior and professional work show absolutely nothing like what we expect to see in the development of an alcohol use disorder.

(Ex. 12, p. 103-104.)

22. Dr. Bill Kim testified about respondent's character. He has known respondent since 2004 when they entered into a professional relationship at a shared medical facility. Between 2005 and 2007, they saw each other on a regular basis, at least two to three times per week. After their professional association dissolved, they continued to have a personal relationship and cross-referred patients to each other. Dr. Kim testified that he has never observed respondent under the influence of alcohol. In 13 years, they have socialized together at events where alcohol was served, but alcohol consumption was "not a big part of the night." He testified that respondent is well-known as a surgeon with integrity, and that he has found respondent to be reliable, and he has received positive feedback from patients he has referred to respondent.

23. Respondent offered character reference letters in support of his defense. Respondent disclosed the facts and circumstances underlying the conviction to each person who wrote a letter.

(A) Edward Lee, a Board licensee, wrote the following: "[Respondent] has always demonstrated the highest moral and ethical character. He has always been honest and conscientious with patients. . . . It was quite surprising to learn of the recent DUI incident. . . . I have never observed signs of impaired judgment or abnormal behavior from [respondent]." (Ex. H.)

(B) David A. Blake, another Board licensee, described respondent as "a reliable, dependable, trustworthy individual and physician . . . [and that] he is always punctual, and extremely competent . . . [and] has never presented to surgery appearing under the influence of any alcohol or substances." (Ex. I.)

(C) Peter H. Lee, another Board licensee, wrote, "Knowing [respondent's] character personally and professionally, I believe this incident is totally out of his character and is an isolated aberrant occurrence." (Ex. J.)

(D) James R. Negele, an attorney, wrote: "[Respondent and I] have shared many meals together in social situations where alcohol was served, and I never once saw him drink more than one or two glasses of wine over the course of an entire evening. When he told me he had gotten a DUI I was shocked. From all my knowledge of and experience with [respondent] his getting a DUI is completely aberrational and out of character. [Respondent] is the epitome of a responsible gentleman: punctual, polite, and always considerate of others. I have never seen him impaired in any way, even slightly. Clearly, this lapse of [respondent's] judgment is an anomaly that will never be repeated." (Ex. K.)

(E) C. Anderson Troedsson, the owner of an architectural design development firm, wrote, “My wife and I have enjoyed the company of [respondent] and his wife (name omitted) at numerous dinners and other social occasions, and although alcoholic beverages were served at all, and not once did I ever [witness respondent] intoxicated or even tipsy. Quite the contrary, he was always a model of drinking in moderation.” (Ex. L.)

(F) Michael G. Harrington, Program Director of Huntington Medical Research Institute, wrote: “I consider [respondent’s] DUI is completely out of character, as I often saw him in the presence of alcohol when he was never out of control. In fact he has always been keen to collect and learn about wine in a scholarly manner, as an investment in high-quality wine, and never as a means to abuse or lose control. This incident is a complete surprise. In all the years I’ve known [respondent] I have never seen him impaired in any way or abuse alcohol. He is always professional, punctual, respectful and has a reputation for being dependable and always reliable.” (Ex. M.)

LEGAL CONCLUSIONS

Standard of Proof

1. The standard of proof in an administrative action seeking to suspend or revoke a physician’s certificate is clear and convincing evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

2. Clear and convincing evidence requires a finding of high probability or evidence so clear as to leave no substantial doubt; sufficiently strong evidence to command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.)

The Law Governing Discipline

3. A licensee who has been found guilty under the Medical Practice Act may: have his or her license revoked; have his or her right to practice suspended for a period not to exceed one year; be placed on probation and required to pay the cost of probation monitoring; be publicly reprimanded by the Board; or have any other action taken in relation to discipline as the Board or administrative law judge deems proper. (Bus. & Prof. Code, § 2227, subd. (a).)

4. The Board must take action against any licensee who is charged with unprofessional conduct. (Bus. & Prof. Code, § 2234.)

5. Unprofessional conduct includes conduct which is unbecoming a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575)

6. Unprofessional conduct includes the conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon. (Bus. & Prof. Code, § 2236, subd. (a).)

7. California Code of Regulations, title 16, section 1360 provides, in part:

A crime or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license, certificate or permit under the Medical Practice Act if to a substantial degree it evidences present or potential unfitness of a person holding a license, certificate or permit to perform the functions authorized by the license, certificate or permit in a manner consistent with the public health, safety or welfare.

8. Unprofessional conduct includes the use of alcoholic beverages to an extent, or in such a manner, as to be dangerous or injurious to the licensee, or to any other person or to the public. (Bus. & Prof. Code, § 2239, subd. (a).)

First Cause for Discipline – Conviction of Crime

9. Respondent was convicted of driving with a blood-alcohol content of more than 0.08 percent. As proven by clear and convincing evidence, respondent was so intoxicated that he fell asleep behind the wheel of his automobile which collided with a light pole. This evidence exhibits to a substantial degree a present or potential unfitness to perform the functions of a physician and surgeon in a manner consistent with the public health, safety, or welfare. Accordingly, the crime is substantially related to the qualifications, functions, or duties of a physician and surgeon under California Code of Regulations, title 16, section 1360.

10. Cause exists to discipline respondent's certificate under Business and Professions Code sections 2227 and 2236 because he was convicted of a crime substantially related to the qualifications, functions, or duties of a physician and surgeon.

Second Cause for Discipline – Excessive Use of Alcohol

11. Respondent drank enough red wine and soju to cause his blood-alcohol content to measure 0.18 percent, more than twice the legal limit. By his own testimony, respondent could have killed himself or another person by driving his car while so intoxicated.

12. Cause exists to discipline respondent's certificate in that he violated Code sections 2227 and 2239, subdivision (a), because he drank alcohol to an extent, or in a manner, as to be dangerous or injurious to himself and the public.

Level of Discipline

13. In reaching a decision on the appropriate level of discipline, the Board must consider the guidelines entitled *Manual of Model Disciplinary Orders and Disciplinary Guidelines*, 12th Edition, 2016. (Cal. Code Regs., tit. 16, § 1361, subd. (a).) For the conviction of a misdemeanor crime, and the use of alcohol to the extent or in a manner dangerous to the physician or others, the guidelines recommend a maximum penalty of revocation and a minimum penalty of stayed revocation with five years of probation.

14. At the hearing, complainant sought the imposition of the minimum recommended penalty. Specifically, the deputy attorney general argued that an appropriate level of discipline would be to revoke respondent's license, stay the revocation, and place respondent on probation subject to terms that would oversee and monitor respondent's use of alcohol.

15. Although the evidence did not establish a pattern of repeated alcohol abuse to support a diagnosis of alcohol use disorder, a single conviction for driving under the influence may support a disciplinary proceeding against a licensee. (*Sulla v. Board of Registered Nursing* (2012) 205 Cal.App.4th 1195.) The purpose of license discipline includes not only the protection of the public, but also the prevention of future harm. To defer license discipline until the licensee establishes recidivism poses a risk of harm to the public, in disregard of these purposes. The law recognizes that it is far more desirable to impose discipline before a licensee causes harm than after harm has occurred. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757; *In re Kelley* (1990) 52 Cal.3d 487.)

16. In aggravation, the Board publicly reprimanded respondent based on a prior conviction.

Mitigating Factors and Rehabilitation

17. Deviating from the guidelines is appropriate where the facts of the particular case warrant such a deviation, such as the presence of mitigating factors. (Cal. Code Regs., tit. 16, § 1361, subd. (a).)

18. Rehabilitation requires a consideration of those offenses from which one has allegedly been rehabilitated. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041.) Rehabilitation is a state of mind, and the law looks with favor upon rewarding with the opportunity to serve one who has achieved reformation and regeneration. (*Id.*, at 1058.) The absence of a prior disciplinary record is a mitigating factor. (*Chefsky v. State Bar* (1984) 36 Cal.3d 116, 132, fn. 10.) Remorse and cooperation are mitigating factors. (*In re Demergian* (1989) 48 Cal.3d 284, 296.) While a candid admission of misconduct and full acknowledgment of wrongdoing may be a necessary step in the rehabilitation process, it is only a first step. A truer indication of rehabilitation is presented if an individual demonstrates by sustained conduct over an extended period of time that he is once again fit to practice. (*In re Trebilcock* (1981) 30 Cal.3d 312, 315-316.)

19. Respondent provided significant evidence of mitigation and rehabilitation. Although he remains on court probation, the conviction was his first offense involving alcohol use, and he has fully cooperated with the terms and conditions of probation to date. Almost two years have passed since he engaged in the misconduct that resulted in his conviction, during which time he took responsibility for his actions, sought evaluation and treatment, and established by competent medical evidence that he does not have an alcohol use disorder. His expression of remorse and humiliation credibly exhibit a change in attitude and a state of mind of reformation and regeneration. Although he has a prior public reprimand, the underlying offense was unrelated to alcohol use and he has no prior disciplinary record.

20. Issuing a public reprimand is inconsistent with specific recommendations set forth in the Board's disciplinary guidelines. However, a public reprimand is the most appropriate sanction in light of respondent's history related to his use of alcohol, the nature and extent of his misconduct giving rise to this disciplinary action, and the effective remedial steps he has taken to ensure similar events will not reoccur. A public reprimand ensures that respondent's misconduct will be a matter of public record and it will serve as a continuing reminder of his responsibility to remain abstinent. Public protection does not require respondent be placed on probation or that any conditions be placed on the public reprimand.

21. The language of California Code of Regulations, title 16, sections 1361 and 1361.5 requires that, if a licensee is disciplined for unprofessional conduct involving the abuse of alcohol, "the licensee shall be presumed to be a substance-abusing licensee," and the "probationary terms and conditions [from the Uniform Standards for Substance-Abusing Licensees] shall be used without deviation in the case of a substance-abusing licensee." In this case, the presumption that respondent is a substance abusing licensee has been rebutted. Additionally, the language of the regulations apparently presumes that the discipline imposed on the licensee will be probation, rather than a public letter of reprimand. This language calls into question the effect of the regulations on statutory discretion afforded when imposing discipline.

22. Business and Professions Code section 2227 identifies probation and public reprimand as separate and distinct forms of license discipline. In this case, no probation is imposed, and there is no cited statute or case law which specifically requires the probationary terms in the Uniform Standards for Substance-Abusing Licensees to be imposed along with a public reprimand. If the probationary terms set forth in the Uniform Standards for Substance-Abusing Licensees must be imposed with any discipline, this would convert all discipline to probation, including instances where probation is not warranted. This would negate the discretion afforded in Business and Professions Code section 2227 and acknowledged in California Code of Regulations, title 16, section 1361, subdivision (a). Such an unreasonable interpretation of the disciplinary statutes and regulations would result in unduly punitive discipline in some cases. Given the foregoing, California Code of Regulations, title 16, sections 1361 and 1361.5 do not mandate the imposition of the probationary terms and conditions in the Uniform Standards for Substance-Abusing Licensees when a public reprimand is issued, as in this case.

ORDER

Physician's and Surgeon's Certificate number A 41771 issued to respondent is hereby publicly reprimanded pursuant to Business and Professions Code section 2227, subdivision (a)(4).

DATED: October 6, 2017

DocuSigned by:

Matthew Goldsby

8CC813E7989041E

MATTHEW GOLDSBY
Administrative Law Judge
Office of Administrative Hearings

1 KATHLEEN A. KENEALY
Acting Attorney General of California
2 E. A. JONES III
Supervising Deputy Attorney General
3 WENDY WIDLUS
Deputy Attorney General
4 State Bar No. 82958
California Department of Justice
5 300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
6 Telephone: (213) 897-2867
Facsimile: (213) 897-9395
7 E-mail: Wendy.Widlus@doj.ca.gov
Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Feb. 17 20 17
BY [Signature] ANALYST

8
9 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 800-2016-021538

12 **Andrew Kwanghwi Choi, M.D.**
13 **4160 Wilshire Blvd., Floor 2**
14 **Los Angeles, California 90010**

A C C U S A T I O N

15 **Physician's and Surgeon's Certificate**
No. A 41771,

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Kimberly Kirchmeyer ("Complainant") brings this Accusation solely in her official
21 capacity as the Executive Director of the Medical Board of California, ("Board") Department of
22 Consumer Affairs.

23 2. On or about June 10, 1985, the Medical Board issued Physician's and Surgeon's
24 Certificate Number A 41771 to ANDREW KWANGHWI CHOI, M.D. ("Respondent"). The
25 Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the
26 charges brought herein and will expire on November 30, 2018, unless renewed.

27 //

28 //

JURISDICTION

3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2227 of the Code states that a licensee who is found guilty of a violation of the Medical Practice Act (Bus. & Prof. Code, § 2000 et seq.), or who has entered into a stipulation for disciplinary action with the Board, may have his license revoked; suspended for a period not to exceed one year; placed on probation and required to pay the costs of probation monitoring; or have any other action taken in relation to discipline as the Board may deem proper.

5. Section 2236 of the Code states:

“(a) The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter [Chapter 5, the Medical Practice Act]. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

“(b) The district attorney, city attorney, or other prosecuting agency shall notify the Division of Medical Quality of the pendency of an action against a licensee charging a felony or misdemeanor immediately upon obtaining information that the defendant is a licensee. The notice shall identify the licensee and describe the crimes charged and the facts alleged. The prosecuting agency shall also notify the clerk of the court in which the action is pending that the defendant is a licensee, and the clerk shall record prominently in the file that the defendant holds a license as a physician and surgeon.

“(c) The clerk of the court in which a licensee is convicted of a crime shall, within 48 hours after the conviction, transmit a certified copy of the record of conviction to the board. The division may inquire into the circumstances surrounding the commission of a crime in order to fix the degree of discipline or to determine if the conviction is of an offense substantially related to the qualifications, functions, or duties of a physician and surgeon.

“(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this section and Section 2236.1. The record of conviction shall be conclusive evidence of the fact that the conviction occurred.”

6. Section 2239 of the Code states:

“(a) The use or prescribing for or administering to himself or herself, of any controlled substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public, or to the extent that such use impairs the ability of the licensee to practice medicine safely or more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this section, or any combination thereof, constitutes unprofessional conduct. The record of the conviction is conclusive evidence of such unprofessional conduct.

“(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section. The Division of Medical Quality^[1] may order discipline of the licensee in accordance with Section 2227 or the Division of Licensing may order the denial of the license when the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.”

FIRST CAUSE FOR DISCIPLINE

(Conviction of a Crime)

7. Respondent is subject to disciplinary action under Code section 2236 in that he was convicted of a crime which is substantially related to the qualifications, functions, or duties of a physician and surgeon. The circumstances are as follows:

8. On or about January 29, 2016, a Misdemeanor Complaint was filed in the Superior

¹ Business and Professions Code section 2002, effective January 1, 2008, provides that unless otherwise expressly provided, the term “Board” as used in the State Medical Practices Act (Bus. & Prof. Code, § 2002 et seq.) means the “Medical Board of California,” and references to the “Division of Medical Quality” and “Division of Licensing” in the Act or any other provision of law shall be deemed to refer to the Board.

1 Court of California, County of Los Angeles in the case entitled *The People of the State of*
2 *California v. Andrew Choi*, Case Number 6MN00884. Respondent was charged with the
3 following allegations:

4 “COUNT 1: On or about January 08, 2016, in violation of Section 23152(a) of the
5 Vehicle Code (DRIVING UNDER THE INFLUENCE OF ALCOHOL), a
6 MISDEMEANOR, ANDREW CHOI did unlawfully drive a vehicle while under the
7 influence of alcohol.

8 “COUNT 2: On or about January 08, 2016, in violation of Section 23152(b) of the
9 Vehicle Code (DRIVING WITH MORE THAN 0.08 PERCENT OF ALCOHOL), a
10 MISDEMEANOR, ANDREW CHOI did unlawfully drive a vehicle with more than 0.08
11 percent of alcohol in his blood.”

12 9. On or about March 4, 2016, Respondent pled Nolo Contendere to Count 2. The Court
13 sentenced Respondent to 3 years summary probation on terms and conditions, which included:

- 14 A. Obey all laws.
- 15 B. Obey all orders, rules, and regulations, and directives of the court and jail.
- 16 C. Do not drive a motor vehicle with a measurable amount of alcohol or
17 drugs in his blood and submit to a chemical test of his blood on demand of any peace officer,
18 probation officer, or mandatory supervision officer.
- 19 D. Enroll in and successfully complete a 3 month first offender alcohol and
20 other drug education and counseling program.
- 21 E. Pay a fine of \$2,022.00.
- 22 F. Not drive unless in possession of a valid driver’s license and insurance.
- 23 G. Pay restitution per any civil judgment or compromise.
- 24 H. Attend 10 Alcoholics Anonymous meetings in addition to those required
25 by the 3 month first offender alcohol and other drug education and counseling program.

26 10. The Court dismissed Count 1 in the interests of justice.

27 11. The facts and circumstances of the above conviction are as follows.

- 28 A. On or about January 7, 2016, Los Angeles Police Department (LAPD)

1 officers were called to the scene of a traffic collision at Mariposa and Sixth streets in Los
2 Angeles, California. When the LAPD officers arrived they observed a car driven by Respondent
3 which had collided with a light pole.

4 B. An LAPD officer contacted Respondent and observed him to display a
5 lack of coordination, slurred speech, bloodshot, watery eyes, with the strong smell of alcohol
6 emitting from his mouth.

7 C. Respondent was given pre-demonstrated Field Sobriety Tests which he
8 failed to satisfactorily perform. Based on all of the above information the officer formed the
9 opinion that Respondent was under the influence of a central nervous system depressant.

10 D. Respondent provided a blood sample to test for the presence of drugs.
11 Respondent's blood was analyzed and tested his blood was determined to have a blood alcohol
12 level of .18%.

13 **SECOND CAUSE FOR DISCIPLINE**

14 (Excessive Use of Alcohol)

15 12. Respondent is subject to disciplinary action under Code sections 2239, in that he
16 used alcohol to the extent or in such a manner as to be dangerous or injurious to herself, other
17 persons, and the public. The facts and circumstances in the First Cause for Discipline are
18 incorporated herein as if fully set forth.

19 **DISCIPLINARY CONSIDERATIONS**

20 13. To determine the degree of discipline, if any, to be imposed on Respondent Andrew
21 Kwanghwi Choi, M.D., Complainant alleges that on or about April 9, 2007, in a prior criminal
22 proceeding entitled *United States of America v. Andrew K. Choi* United States District Court, CR
23 07-136-JFW, Respondent was convicted by his plea of guilty to the Single-Count Information
24 which alleged a violation of Title 21, U.S.C. §§ 331, subdivision (c), §§ 333, subdivision (a)(1),
25 and §§ 352, subdivision (f), also known as Receipt in Interstate Commerce of Misbranded Drug
26 and Delivery Thereof. As a result of his plea of guilty, on or about August 11, 2008, Respondent
27 was sentenced to complete one year probation under various terms and conditions. The record of
28 the criminal proceeding is incorporated as if fully set forth herein.


14. To determine the degree of discipline, if any, to be imposed on Respondent Andrew Kwanghwi Choi, M.D., Complainant alleges that on or about July 22, 2011, in a prior disciplinary action entitled *In the Matter of the Accusation Against Andrew Kwanghwi Choi, M.D.* before the Medical Board of California, in Case Number 17-2008-194553, Respondent's license was publically reprimanded for his conviction of an offense which is substantially related to the qualifications, functions, or duties of a physician and surgeon as a result of his plea of guilty to the Single-Count Information in a prior criminal proceeding entitled *United States of America v. Andrew K. Choi* United States District Court, CR 07-136-JFW, which alleged a violation of Title 21, U.S.C. §§ 331, subdivision (c), §§ 333, subdivision (a)(1), and §§ 352, subdivision (f), also known as Receipt in Interstate Commerce of Misbranded Drug and Delivery Thereof. That decision is now final and is incorporated by reference as if fully set forth herein.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate Number A 41771, issued to Andrew Kwanghwi Choi, M.D.;
2. Revoking, suspending or denying approval of Andrew Kwanghwi Choi, M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code;
3. Ordering Andrew Kwanghwi Choi, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and
4. Taking such other and further action as deemed necessary and proper.

DATED: February 17, 2017


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant